

Order

Entered: May 28, 2004

Michigan Supreme Court
Lansing, Michigan

123833

BODDY CONSTRUCTION COMPANY, INC.,
Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF
TRANSPORTATION,
Defendant-Appellant.

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SC: 123833
COA: 237471
Ct of Claims: 00-017592-CM

On order of the Court, the application for leave to appeal the February 28, 2003 judgment of the Court of Appeals is considered, and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we MODIFY the judgment of the Court of Appeals by striking the finding that defendant waived the notice provision of the construction contract. Because there is a fact question regarding whether there was a waiver of the notice provision, the Court of Claims improperly granted summary disposition for the defendant. On remand as ordered by the Court of Appeals, the Court of Claims shall make appropriate findings regarding the waiver issue.

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I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 28, 2004 *Corbin R. Davis* Clerk